

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No. 2015-031-00487R

Parcel No. 2104101002

Kenneth A. Kizer,

Appellant,

v.

Dubuque County Board of Review,

Appellee.

Introduction

This appeal came on for hearing before the Property Assessment Appeal Board (PAAB) on December 9, 2015. Todd Locher of Locher and Locher, PLC, Farley, Iowa represented Kenneth Kizer. Dubuque County Attorney Joshua Vander Ploeg represented the Board of Review. Both parties participated by phone.

Kizer is the owner of a residential, one-story, brick home located at 12846 Skyline Road, Zwingle. The home, built in 2008, has 2084 square feet of above-grade finish; a full basement with 1900 square feet of living-quarter quality finish; an open porch; and a two-car attached garage. There is also a 3600 square-foot steel utility building, built in 2007, on the 3.990-acre site.

The property's January 1, 2015, assessment was \$348,740, allocated as \$52,200 in land value and \$296,540 to improvement value. Kizer's protest to the Board of Review claimed the assessment was not equitable as compared with assessments of other like property and that the property was assessed for more than the value authorized by law under Iowa Code sections 441.37(1)(a)(1)(a-b).

The Board of Review denied the petition.

Kizer appealed to PAAB and asserted the subject property's assessment should be \$300,000.

Findings of Fact

Kenneth Kizer does not believe his property is fairly assessed as compared to a host of other properties in his assessment jurisdiction. Based on his review of these other properties, he contends his property's assessment should be lowered approximately \$52,000.

To support his inequity claim, Kizer first submitted five properties to the Board of Review that he considered as reasonable equity comparables.

	2015 Assessed Value
Subject	\$348,740
14397 Skyline Rd	\$258,352
12498 Skyline Rd	\$347,823
12000 Skyline Rd	\$183,611
15220 Monastery Rd	\$289,750
15708 Monastery Rd	\$263,890

Regarding these properties, the Board of Review noted that all of those on Skyline Road have an agricultural classification compared to the subject's residential classification, and for this reason, their land values are not reasonable equity comparables. Despite this, Kizer believes the property located at 12498 Skyline, which is directly across the road and sits on 28-acres, demonstrates that his property is not equitably assessed. We agree with the Board of Review that the agriculturally classified properties are not reasonable comparables to Kizer's. As required by law, agricultural property is assessed based on a productivity and net earnings formula, not on market value; therefore, agricultural properties with ag valuations are simply not comparable to residential valuations.

The Monastery Road properties are classified residential like the subject and are similar style, one-story homes. The assessed values that Kizer reported on his petition for these properties reflect a value that includes exemptions. We note the actual 2015 assessments are actually \$314,390 for 15220 Monastery Road and \$294,980 for 15708 Monastery Road. However, neither of the properties has sold recently and Kizer did not

submit an opinion of market value, which is necessary to develop an assessment/sales ratio.

Kizer also submitted an additional fifty properties he believes demonstrate his property is inequitably assessed. (Exs. 1-2). Kizer compared the assessed dwelling value of his property, which he calculated as \$142.29 per-square-foot, to the fifty properties. He noted these properties have assessed dwelling values ranging between \$91.11 to \$142.54 per-square-foot with the majority (36) having assessed dwelling values under \$130 per-square-foot. We first note that simply comparing the assessed dwelling value on a per-square-foot basis is not proper methodology to support an equity claim.

Additionally, County Assessor Dave Kubik testified that the subject property has a 3600-square-foot steel utility building, which is included in its improvement (dwelling) value that Kizer used in his calculations. Few, if any of the property's Kizer selected have this amenity, which would skew the calculations of those properties lower compared to his. When the assessed value of the subject's outbuilding (\$49,590) is removed the assessed value, the value per square foot is significantly reduced to \$118.50 per-square-foot (\$246,950/2084).

Finally, only four of the properties sold in 2014 or 2015. (Ex. 2, pp. 45-47, 89-92, 113-116, 157-160). The following chart summarizes these properties and their assessed value/sales price ratios.

Property	2015 Assessed Value	Sale Price	Sale Date	AV/SP Ratio	SQ FT (TGLA)	Basement Finish	Grade	Acres	Other
Subject	\$348,740	N/A	N/A	N/A	2084	1900	3	3.99	Out- building
Comp 12: 13725 Mueller Pkwy	\$272,300	\$275,000	14- Aug	0.99	1982	1877	3-5	1.48	
Comp 23: 527 Fairway Ln	\$274,890	\$287,500	14- Nov	0.96	2436	750	3	1.16	2-story
Comp 29: 14328 Heatherwood Ct	\$280,650	\$300,000	15- Jun	0.94	1748	800	3+10	1.36	Pool
Comp 40: 15928 Red Maple Dr	\$292,380	\$310,000	14- Apr	0.94	1997	200	3+10	1.63	

Comparables 12, 29, and 40 are all one-story homes like the subject; however, Comparables 29 and 40 have significantly less basement finish than the subject rendering them less reasonable comparables. Comparable 23 is a two-story property. The properties were built between 2000 and 2013. The site sizes range from 1.16 to 1.63 acres, compared to the subject's 3.99-acre site. Comparable 29 has a swimming pool. None of the sales has an outbuilding like the subject property. The differences in site size, the lack of an outbuilding, and differences in the properties' square footage explain many of the differences between the assessed values of these properties compared to the subject. Moreover, the assessment/sales ratios all indicate the properties are selling for very near or only slightly more than their assessed values indicating a pattern that the assessments closely approximate the market.

Kizer did not submit any evidence to PAAB of the market value of his property, such as an appraisal, adjusted comparable sales, or a cost analysis. And there was no discussion of the sales comparables that appeared in the certified record.

The Board of Review submitted an appraisal completed by Bradley Brissey, Brissey Realty, Dubuque, Iowa. Brissey testified he did not complete an interior inspection of the property at Kizer's request. Thus, his appraisal is based on an exterior inspection, and he assumed the interior of the property to be in good condition.

Brissey relied on the sales comparison approach to value and submitted three comparable properties. All are recent sales of similar one-story homes. Two of the comparable sales have a steel outbuilding like the subject. After adjusting the sales for differences, he concluded an opinion of market value, as of January 1, 2015, of \$360,000.

Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2015). PAAB is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB considers only those grounds presented to or considered by the Board of Review, but determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. §§ 441.37A(1)(a-b). New or additional evidence may be introduced, and PAAB considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993).

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 257 Iowa 575, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

“(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.”

Id. at 711. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value. § 441.21(1). Nevertheless, in some rare instances, the test may be satisfied.

Kizer’s evidence asserts the assessed value of the property’s improvements are higher than those of like properties. To this point, the IOWA REAL PROPERTY APPRAISAL MANUAL 2-2 states:

When appraising real estate, the assessor must consider two separate entities; land, which is the nonwasting portion of the real estate; and improvements, which are the wasting portion subject to various forms of depreciation. Land and improvements are frequently valued separately so that the trends and factors affecting can be studied. However, the final analysis for an improved property must be as a unit.

In examining the evidence presented in this case, our primary concern is with the property’s total assessment, encompassing the land and improvements.

Although Kizer offered fifty properties he considered comparable for an equity analysis, only four were recent sales. None of these properties had an outbuilding like the subject, and all were on smaller sites. These differences would attribute to differences in the assessments of the properties and render them less-than-ideal comparables. Moreover, the assessments/sales ratio of these four properties indicates,

in general, that properties in Dubuque County are assessed approximate to their fair market value.

Although Kizer also attempts to assert that his site is not similarly assessed compared to the property across the street, we note that property has an agricultural classification whereas his property is residentially classified. The two properties are not reasonable comparables for this reason. We find no evidence the Assessor failed to uniformly apply an assessing method to similarly situated or comparable properties.

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(1)(b), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Boekeloo v. Bd. of Review of the City of Clinton*, 529 N.W.2d 275, 277 (Iowa 1995). Kizer did not submit any evidence of the property's fair market value. The Brissey appraisal is the only evidence in the record of the fair market value as of January 1, 2015. It does not support a claim that the subject is assessed for more than authorized by law.

For the foregoing reasons, the Board finds that the Kizer failed to show his property is inequitably assessed or over-assessed.

Order

IT IS THEREFORE ORDERED that the Dubuque County Board of Review's action is affirmed.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A (2015). Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action. Any judicial action challenging this Order shall be filed in the district court where the property is located within 20 days of the date of this Order and comply with the requirements of Iowa Code sections 441.38; 441.38B, 441.39; and Chapter 17A.

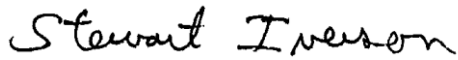
Dated this 7th day of January, 2016.



Karen Oberman, Presiding Officer



Jacqueline Rypma, Board Member



Stewart Iverson, Board Chair

Copies to:

Todd Locher

Joshua Vander Ploeg